

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35750

STATE OF IDAHO,)	2010 Unpublished Opinion No. 340
)	
Plaintiff-Respondent,)	Filed: February 3, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
NICHOLAS VINCENT NATALE,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael E. Wetherell, District Judge.

Order revoking probation and requiring execution of unified eight-year sentence with three-year determinate term for forgery; order denying Rule 35 motion, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

Nicholas Vincent Natale pled guilty to forgery. Idaho Code § 18-3601. The district court imposed a unified eight-year sentence with a four-year determinate term, but after a period of retained jurisdiction, suspended the sentence and placed Natale on supervised probation. Subsequently, Natale admitted to violating several terms of the probation, and the district court reinstated supervised probation with additional conditions. Within a short period of time Natale admitted to again violating the conditions of his probation and the district court consequently revoked probation and ordered execution of a reduced unified sentence of eight years with three years determinate. Natale also filed an Idaho Criminal Rule 35 motion, which the district court

denied. Natale appeals, contending that the district court abused its discretion in revoking probation and that the reduced sentence is excessive. Natale also appeals the denial of this Rule 35 motion.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we will examine the entire record encompassing events before and after the original judgment. *State v. Hanington*, 148 Idaho 26, 218 P.3d 5 (Ct. App. 2009). We base our review upon the facts existing when the sentence was imposed as well as events occurring between the original sentencing and the revocation of the probation. *Id.*

A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In

presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Upon review of the record, including the new information submitted with Natale's Rule 35 motion, we conclude no abuse of discretion has been shown. Therefore, the district court's order denying Natale's Rule 35 motion is affirmed.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in ordering execution of Natale's reduced sentence without further modification. Therefore, the order revoking probation and directing execution of Natale's reduced sentence and the order denying Natale's Rule 35 motion are affirmed.